CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

July 14, 2005

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (Commission) to order at 9:51 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Sheridan Downey, Eugene Huguenin, and Ray Remy were present. Commissioner Phil Blair was absent.

Item #1. Public Comment.

Comments of Dallas Jones:
Dallas Jones, Secretary Treasurer of the California Professional Firefighters (CPF), representing more than 30,000 first responders in our state, stressed the importance of time. He said that time is of the essence. Within a few weeks, the Secretary of State (SOS) will begin producing the voter information pamphlet. He advised that the pamphlet will be incomplete unless the Commission acts now. The Small Business Action Committee (SBAC) political action committee (PAC) has been hiding in the shadows of California's campaign finance laws unaccountable to anyone. It has funneled more than half of a million dollars into qualifying and promoting Proposition 75, an initiative to silence the voices of millions of teachers, police officers, nurses, and front line firefighters. A similar measure, Proposition 226, was defeated in 1998 but is now back thanks to the SBAC, which identifies itself as in the business of raising and spending money for initiatives on this November's ballot. Mr. Jones wondered where the money was coming from and whether any of the contributors are actually small businesses. He said no one knows, because they are not talking and the Commission is not requiring them to talk. The Alliance for a Better California has asked the Commission to pry open the shutters protecting Proposition 75's corporate benefactors and force them to play by the same campaign finance reporting rules that every other primary formed PAC follows. He mentioned that those are the rules that CPF follows. He understands that resources are scarce, but the Commission has had months to act, and time is running out. He urged the Commission to act in the next 48 hours to ensure that Californians know exactly who is supporting Proposition 75 and that the information is included in the ballot pamphlets.

Comments of Ron Cottingham:
Ron Cottingham, President of the Peace Officers Research Association of California (PORAC), said he was wearing a black band across his badge because the night before the meeting, Sacramento lost two peace officers in a helicopter crash. Mr. Cottingham advised that he represents over 700 public safety associations and over 58,000 members and that Californians have a lot of questions about what the initiatives do and how they impact their families and communities. The number one question is who is supporting the measures. The names of the initiative's financial supporters are important because voters know who they can trust. This is especially the case with Proposition 75. 85% of the donors to Proposition 75 are unknown. With the deadline on the ballot pamphlets approaching, the time to reveal donors is now. This situation is not a coincidence. He added that this is a well orchestrated effort on the part of the large corporate special interest to hide their faces from the voting public. It is the duty of the

Commission to unmask these special interests. Their hidden agenda is to weaken public employees and strengthen the political influence of big corporations. The voters of California deserve to know their names, and the Commission should make sure voters have that information.

Comments of Cheryl Obasih-Williams:
Cheryl Obasih-Williams, a registered nurse representing the United Nurses Association of California which has more than 15,000 nurses and other health care professionals, said they put patients' interests ahead of their own every day. She said that earlier this year, the corporations and special interests convinced the Governor to bend the rules on behalf of non-profit hospitals to weaken patient safety issues in hospitals. The California legislature passed a landmark nurse-staffing law that went into effect last year, setting the basic standard of nurse-to-patient ratios for every California hospital. Yet, the Governor is working for the moneyed hospitals. He has again tried to weaken California's safe staffing laws. We fought back and won, but California nurses are being targeted again. A secret organization of nameless, faceless people are trying to silence the nurses' voices so that the next time there is a health care issue, they will not be able to fight. She remarked that special interests and corporations want to pass Proposition 75 to increase an already hardened burden and to give them more power in government. They have put California voters on a need-to-know basis that is unfair. California voters need to know who these people are. She urged the Commission to act within the 48 hours.

Comments of Dennis Smith:
Dennis Smith, an accounting professor in the Business Department at Sacramento City College and a Vice President for the California Federation of Teachers, said he represents teachers in elementary, junior high, and high schools, community colleges, and the University of California in addition to school bus drivers, cafeteria workers, and classified staff. He requested that the Commission make public the identities of the contributors supporting Proposition 75 and that the names be published on the upcoming ballot description for the initiative. California Government Code section 81002(a) requires that receipts and expenditures in elections campaigns be fully and truthfully disclosed in order that the voters may be fully informed. Proposition 75 prohibits public employee labor organizations from using dues or fees for political contributions unless the employee provides prior consent each year on a specified written form. The public has a right to know whose interests are being met by this proposal. Fair political practice demands that the ballot be very clear by including the identities of those who have contributed to support this initiative. The proposition would shift the balance of power over government and cause individual citizens and working people to lost voice in the political process, while corporations and business associations will gain even more influence over government if the initiative passes. He added that the Commission has an obligation to see that the voters are fully informed, and he urged the Commission to disclose and publish the identities of the contributors who support Proposition 75.

Comments of Eric Hynes:
Eric Hynes, a member of the California Teachers Association (CTA) board of directors, said that on behalf of the 335,000 members of CTA, he calls on the Commission to expose the forces behind Proposition 75. He is an elementary school teacher in the bay area, and he teaches his students to be honest and open about their intentions. He explained that in a political shell-game

that mocks California's open disclosure laws, the backers of Proposition 75 are hiding their secret group of corporate donors. Proposition 75 is a serious threat to democracy in California, and the Commission can make a huge difference in helping voters to understand who is behind this assault on working people. Voters in the November special election have a right to know why corporate money is flowing in from out-of-state to support this vicious attack. He mentioned that July 25th is the deadline for showing voters who is behind Proposition 75 because it is the cut-off date for preparing state voter guides. He urged the Commission to act now so voters can make up their own minds about the conservative corporate donors behind this campaign. CTA is part of the Alliance for a Better California (ABC), a group of nearly 2 million working Californians opposing Proposition 75. Mr. Hynes advised that recently, ABC has demanded that the Commission require the deceptively-named Small Business Action Committee to reveal its donors on a more frequent basis as other PACS must do, instead of only once or twice a year. He added that the hidden agenda of Proposition 75 is to weaken public employees and strengthen the political influence of big corporations and business interests who are already drowning the voices of working people in politics with their endless lobbying. The Nonpartisan Center for Responsive Politics says that corporations already outspend unions in politics nationally by 24 to 1. Proposition 75 would make this imbalance even worse. It does not protect the rights of teachers, nurses, police, and firefighters; instead, it is designed to reduce their ability to respond when politicians would harm education, health care, and public safety. He said that when teachers, nurses, police, and firefighters' voices are heard in Sacramento, we all benefit. Current law already protects workers' rights to decide how their dues are spent. The lead sponsor of Proposition 75 is Lewis Uhler, who campaigned unsuccessfully for school vouchers in California and supports President Bush's Social Security privatization plan. Backers of Proposition 75 say they want to protect workers' rights, but that is not true; they are against the minimum wage, against protecting employee health care, and against the 8-hour day. He urged the Commission to pull back the corporate curtain and let the voters have all of the information about who is behind Proposition 75.

Comments of Ned Wigglesworth:
Ned Wigglesworth, with TheRestOfUs.org, said they have sent two letters to the Commission to undertake an investigation into an enforcement action against Governor Schwarzenegger, Governor Schwarzenegger's California Recovery Team (CRT), and Citizen's to Save California (CSC). Unsure whether the Commission would take a civil enforcement action, TheRestOfUs.org filed its own action for injunctive relief in Sacramento County Superior court, alleging that Governor Schwarzenegger is raising money in excess of the contribution limits into both CRT and CSC and that the committees are engaging in election-related activities and coordinated expenditures to support Governor Schwarzenegger's candidacy in 2006. TheRestOfUS.org has also sought a preliminary injunction against CRT based on its paying for the "Join Arnold" website to prevent CRT from raising contributions over the applicable amount for committees that make contributions to candidates. Mr. Wigglesworth said that in response to the case, Governor Schwarzenegger and CRT admit that CRT had been paying for the website since early 2004 but claim that it is not a campaign website and that any language supporting Governor Schwarzenegger as a candidate was left there inadvertently. They also claim that because the Governor has not officially announced his candidacy, the payment for those communications cannot be considered election-related. Mr. Wigglesworth added that Judge Chang had since issued a tentative ruling that denied Defendants' anti-SLAPP motion but

appeared to give credit to some of Schwarzenegger's claims in denying the request for preliminary injunction. TheRestOfUs.org believes that the claims by the Governor and his committees are refuted by the law, the facts, and plain common sense. On the issue of whether the website is a campaign website, the website featured statements promoting Schwarzenegger's qualifications for Governor, including his statement about why he is running for Governor. The website also sought contributions for the Governor's re-election committee, Californians for Schwarzenegger 2006, including that committee's FPPC identification number and the $22,300 limit for candidates, which was not adopted by the Commission until significantly after CRT claims it took over the website. Yet they claim it is not a campaign website. On the issue of CRT's inadvertence, Mr. Wigglesworth said the solicitation for contributions to support the Governor appeared prominently on the homepage of the website and was there for 18 months. Yet they claim inadvertence. Lastly, on the issue of whether claiming that he is not a candidate excuses the Governor from the Political Reform Act (the Act), Mr. Wigglesworth explained that the Governor opened his 2006 candidate account in January 2004 and has since raised several million dollars into that account. He said that the Governor now asserts that that committee was opened only to raise money for officeholder expenses and that the Commission not only sanctions but advises candidates to open such sham committees to avoid the restriction on post-election fundraising in section 85316 of the Act. Mr. Wigglesworth stated that the Governor wants to raise money as a candidate without being subject to the fundraising rules for candidates. Mr. Wigglesworth submitted a formal request that the Commission investigate these committees for violations of section 85316.

Item #2. Approval of the June 15, 2005, Commission Meeting Minutes.

Commissioner Downey moved to approve the June meeting minutes. Commissioner Huguenin seconded the motion. Commissioners Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 4-0 vote.

Item #3. In the Matter of Omar Bradley, FPPC No. 01/632 (9 counts).

Chairman Randolph announced that this item will be postponed to the next meeting unless Commissioners object.

(There was no objection.)

Item #4. Failure to Timely File Major Donor Campaign Statements.

a. **In the Matter of James F. Rooney/Julie A. Rooney, FPPC No. 05-0202** (1 count).
b. **In the Matter of Hanna, Brophy, MacLean, McLeer & Jensen, LLP, FPPC No. 05-0289** (3 counts).
c. **In the Matter of Stuart Moldaw, FPPC No. 05-0297** (1 count).

Norm Ryan, a Long Beach resident and an elected member of the Water Replenishment District of Southern California, commented on agenda item 4(c) regarding Stuart Moldaw. Mr. Ryan asked the Commission to inquire of its staff several things. First, he understands that Mr. Moldaw had a much reduced fine given the nature of his major donor violation because he voluntarily disclosed his noncompliance. Mr. Ryan wondered why, with only one and a half months left within the four-year limit, he decided to come forward. Mr. Ryan believes that this is a result of a civil action that Mr. Ryan filed against many major donor violators. Mr. Ryan would also like to know what representations staff made to Mr. Moldaw in regard to the civil litigation and what the agreement will do to Mr. Ryan's case against him.

Commissioner Downey asked about item 4(b), noting that the amount involved is over $50,000. His recollection is that the streamlined program is primarily designed for violations involving less than $50,000. He wondered why the Brophy case went through the streamlined program despite the amount.

Enforcement Division Chief John Appelbaum responded that the counts came at different times, during different filing years, and that he would have to make more inquiries to better answer the question.

Commissioner Downey asked whether, generally, the Commission's streamlined program does not consist of cases over $50,000.

Mr. Appelbaum said yes.

Commissioner Downey said he does not have an objection to the amount and moved approval of items 4(a), (b), and (c).

Commissioner Huguenin seconded the motion. Commissioners Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 4-0 vote.

ACTION ITEMS

Item #5. Approval of Lobbying Disclosure Information Manual and Form 700-U Statement of Economic Interests for Principal Investigators.

Lynda Cassady, Staff Services Manager II with the Technical Assistance Division, said that the lobbying manual has been updated to include new regulatory and statutory changes, and the Form 700-U has been updated to conform to the regulatory changes made by the Commission in May. She asked for approval of both items.

Commissioner Downey complimented staff for another job well-done.

Commissioner Remy moved to approve the lobbying manual and Form 700-U. Commissioner Downey seconded the motion. Commissioners Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 4-0 vote.

Item #6. Pre-notice Discussion of Amendments to Regulation 18450.4 – Conforming Advertisement Disclosure Regulations with Commission Policy.

Senior Commission Counsel Scott Tocher explained that these amendments make changes to regulation 18540.4 to conform to recent policy pronouncements by the Commission in continuance of the fallout from the recent Ninth Circuit Court of Appeal decision in *ACLU v. Heller*. That decision struck down a Nevada statute that required on-publication disclosure of certain information about contributors to committees. That formed the basis of a challenge against provisions in the Act that similarly required on-publication disclosure of the two largest donors to a committee over $50,000. As a result of the *Heller* decision, the federal court enjoined the Commission from enforcing those provisions as to general purpose committees. Earlier this year, the Commission adopted a resolution clarifying the scope of the relevant statutes. Staff proposes amending regulation 18450.4 to reflect current Commission policy by adding a new subdivision (a) which embodies the conclusions of the Commission resolution and states that the disclosure requirements of sections 84503 and 84506 shall not apply to general purpose committees. Mr. Tocher added that there is a typographical error on line 5 and said that the section identified there should be 82027.5 and not 82047.5. He added that no public comment has been received and suggests that the Commission move forward and schedule the regulation amendments for adoption at the September meeting.

Commissioner Downey asked what enabling statute allows the Commission to make an amendment to qualify the word "committee."

Mr. Tocher responded that before the *Heller* case, it would have been a closer call. But, in the Commission's early experience of interpreting the statute, the Commission faced a similar question interpreting a provision of the ad disclosures regarding the naming of committees. Committees would have to adopt a name that included identifying the economic interests or significant interests of the largest donors and while the language applied to any committee, it was concluded that that was an absurd result because it would mean that a candidate's committee would need to include an identification of the largest donor's interest as well.

Chairman Randolph added that she believed the Commission has the authority to interpret the Act in a way that is consistent with the Constitution as explained by the Ninth Circuit.

Mr. Tocher agreed and added that that authority pre-existed the provision, but there was a provision adopted a few years ago that requires the Commission to interpret and apply the provisions of the Act in a manner that does not abridge the rights of the public.

Chairman Randolph said that the item will be scheduled for adoption in September.

Item #7. Pre-notice Discussion of Proposed Regulation 18732.5 – Statement of Economic Interests of Abolished Agencies.

Commission Counsel Andreas Rockas explained that in recent years, the Technical Assistance Division (TAD) has received inquiries from state agencies slated for abolishment. Persons at such agencies have requested guidance on how statements of economic interests (SEI's) should be handled prior to and following the abolishment of their agency. Under current regulations, SEI's are handled the same way for any agency, whether it is scheduled for abolishment or not. The problem is that when an agency is scheduled for abolishment and nearing its last days, many employees are concerned with finding employment elsewhere and other transition-related issues. As a result, SEI's may not get filed or be adequately reviewed for completeness. In order to more adequately ensure the proper handling of SEI's near the end of an agency's life, the proposed regulation authorizes the Commission to step in and aid or take over the responsibilities which belong to that agency's filing officer and officials.

Mr. Rockas said subdivision (a) of proposed regulation 18732.5 states that it deals only with SEI's of abolished or soon-to-be abolished agencies. The scope of the regulation covers agencies whether set for abolishment in as little as a few weeks or in as much as several years. Subdivision (b) is a definition which aids the reading of the regulation. Subdivision (c) is the heart of the regulation, applying only to abolished agencies for which the Commission is the code-reviewing body. It creates two time periods during which SEI's will be handled differently prior to an agency's abolishment. The first time period described in subdivision (c)(1) covers SEI's filed over 30 days prior to the agency's abolishment. Any SEI's filed with the agency during this time period are to be forwarded to a successor agency, and if no successor agency is identified, then the SEI's are directed to be forwarded to the Commission. He advised that the Commission may want to consider additional language to clarify 1) that the SEI's would be filed with the agency to be abolished before being forwarded, which currently may or may not be adequately implied, and/or 2) that any further processing to be accomplished would be the responsibility of the entity receiving the SEI's. Subdivision (c)(2) covers SEI's filed within the 30 days prior to and after the abolishment of the agency and requires them to be filed either with the abolished agency, a successor agency, or the Commission. Subdivision (d) requires that when a local government agency is to be abolished, its SEI handling will be determined by that agency's code-reviewing body. Subdivision (e) states that SEI filing methods applicable to state agency board and commission members, agency directors, and chief deputy directors who currently file with the Commission shall not be altered by this regulation. Subdivision (f) is meant to clarify how SEI's received by any entity from the agency to be abolished are to be handled. Subdivision (g) indicates that SEI's dealt with by this regulation will continue to be subject to the 7-year retention rule that is contained in the Act.

Mr. Rockas added that decision point 1, relating to subdivision (a), is a potential option that would narrow the application of this regulation to those agencies which are scheduled to be abolished within the next 6 months or less. Currently, the proposed regulation could apply to any agency that has been scheduled for abolishment however many years in the future. Because of the potential burdens that this regulation may impose on the Commission or successor agencies, staff suggests the 6 months language as a method of mitigating such burdens. The purpose would be to prevent filing officers and officials of agencies scheduled for abolishment from prematurely transferring the handling of their agency's SEI's to the Commission or successor agency long before they truly needed help.

Commissioner Huguenin wondered what the difference was between "abolition" and "abolishment."

Mr. Rockas responded that he avoided the word "abolition" because it harkened to American history issues. He offered to check on the correct word in the OED and make any appropriate change.

Commissioner Huguenin commented on the legislature's proclivity for adopting sunset legislation, and suggested that agencies are subject to those sunset provisions. He wondered what the triggering mechanism is that lets people know when the regulation applies to them.

Mr. Rockas said that it is not absolutely clear as currently written. He suggested that it may be something for interpretation or for the more quasi-judicial powers of the agency to decide. Perhaps it requires additional language, and staff is open to hear from Commissioners if there needs to be more specific language in the regulation about when the statute kicks in. But, staff read the regulation broadly and discussed the issue of sunset legislation. Staff determined that a broad reading of the regulation would include a licensing board set to expire in 5 years, for example. That is why staff included the decision point in the proposed regulation.

Commissioner Huguenin remarked that individuals are responsible for their SEI's, not an agency. He commented that the title of the proposed regulation says "Statements of Economic Interests for Abolished Agencies," but technically, it is not of the agency but of the person employed in the agency.

Mr. Rockas said that is true.

Ms. Menchaca asked whether Mr. Huguenin would prefer to specify that the abolishment, or abolition, would occur through legislative order or legislative process. Commission staff ordinarily see that there are statutes that sunset or re-organize an agency or occasionally executive orders from the Governor, but there may be other ways an agency is abolished. She said staff could specify a process for the latter cases.

Commissioner Huguenin said yes, if it is possible. The problem is that the purpose of the regulation is to place someone on notice about where they are supposed to direct their SEI within certain time frames. In order for the person to know what they are directed to do, it needs to be a little more clear on when and how an abolishment occurs and who falls within that.

Ms. Menchaca replied that the scope of the regulation is aimed toward the agency as the filing officer collecting the SEI's. Staff could also look at adding language to make it a roadmap for filers, but the original intent was not to focus on the filers themselves.

Commissioner Huguenin said that if that was the purpose then he does not want to get in the way of that if staff sees it as a better and more holistic approach to the way Commission regulations are laid out. His only experience with an SEI is when he just filed a few months ago. If he were in an agency that was about to be abolished and he was trying to read from the proposed regulation, he would not be sure whether it applied to him.

Commissioner Remy commented that subdivision (d), cities and counties are pretty clear, but special districts are myriad. He wondered whether the county councils are the reviewing bodies for special districts because most do not fall under cities. He also asked whether there is any penalty if a small special district does not comply with this regulation.

Lynda Cassady, Staff Services Manager II with the Technical Assistance Division, replied that there are generally two types of special districts. One is a district that is wholly within a county, and the other is a district that is beyond one county. The Commission is the code-reviewing body for about 500 multi-county special districts. Single county special districts are the responsibility of the board of supervisors. She added that a complaint for noncompliance would be forwarded to the Enforcement Division, which would establish the penalty.

Mr. Rockas added that subdivision (d) was purposely written broadly, without a lot of detail, so that standard penalties that are currently in place would apply. Under subdivision (d), there would be an additional duty placed upon the code-reviewing body of the agency that was to be abolished.

Chairman Randolph opined that the intent is to ensure a seamless transition when an agency closes down and that the forms that have previously been filed are filed with the code-reviewing body, usually the county board of supervisors. The objective is to let them know that they can file with the abolished agency and then forward everything together, or that they can file with the county supervisors. As long as the forms are filed, then there would be no need to scrutinize the process. She asked if that was correct.

Mr. Rockas said that he believed that was correct.

Commissioner Downey said he has no problem with the substance of the proposed regulation, but asked if subdivision (b) could be better worded. He attempted to clarify the sentence to read something like, "Successor agency for purposes of this regulation means the agency designated to retain records of another agency that has been or is designated to be abolished." He suggested that staff may do a better job at re-wording the sentence for clarity.

Chairman Randolph added that subdivision (c)(1) is made clear in the staff report, but when (c)(1) and (c)(2) are read together, it is confusing. She suggested clarifying the language in (c)(1) to explain that the agency to be abolished is still receiving statements, but it is also forwarding them to the successor agency or to the Commission.

Mr. Rockas said the point is well-taken and would be considered.

Commissioner Downey mentioned that he favors the insertion of the 6 month time period in decision point 1.

Chairman Randolph agreed.

Mr. Rockas asked whether 6 months is a good timeline.

Commissioner Downey responded that it seems that sunset provisions typically get renewed before 6 months prior to the sunset date.

Commissioner Huguenin said that legislation usually becomes effective on January 1, with session ending the preceding August or September, so it seems fair.

Chairman Randolph directed staff to bring the proposed regulation back for adoption with the 6-month time period included.

Item #8. Pre-notice Discussion of Proposed New Regulations 18722 and 18117 – Statement of Economic Interests Filing Obligations.

Senior Commission Counsel Steven Russo explained that this item proposes two new regulations to codify current staff advice regarding the filing of Statements of Economic Interests (SEI's). The regulation seeks to address five questions: 1) What constitutes "assuming office?"; 2) What constitutes being "appointed or nominated?"; 3) When is a person considered to have left office?; 4) What duty does one have to file an SEI if serving as an alternate or designee on a council, board, or commission?; and 5) If a filing officer fails to perform some duty, what is the impact on the duty of the individual filer?

Mr. Russo began with the first question regarding when a person assumes office. Most officials are required to file an assuming office SEI within 30 days of assuming office. The Act provides no definition of "assuming office." Staff has broadly recognized "assuming office" to be the point at which a person is either formally instated to a position by being sworn in or effectively begins to perform the duties of the office, particularly by making, participating and making, or using his official position to attempt to influence a governmental decision. Subdivision (a)(1) of proposed regulation 18722 is intended to codify this advice.

Mr. Russo continued with the second question about when a person is appointed or nominated. He explained that officials who are appointed or nominated to an office that is subject to confirmation by the Commission on Judicial Appointments or the State Senate have an obligation to file the statement within 10 days or 30 days of the date of nomination or appointment, depending on the applicable code section. The Act has no definition for these terms, but there are other provisions of the Government Code that define these terms. Subdivisions (a)(2) and (a)(3) of the proposed regulation is intended to incorporate these definitions into the Act so that the date of appointment is the date the person has accepted an offer of appointment from an appointing authority and the date of nomination is the date that the nominating authority submits the nomination to the body that is to confirm the nomination.

Mr. Russo moved on to the question of when a person is considered to have left office. He stated that officials are required to file a leaving office SEI within 30 days of leaving office. There has been some controversy around the revolving-door ban, which is the one-year ban that prevents an official from lobbying his former agency, and whether the SEI rule should be the same to require filing when a person stops performing the duties and stops being compensated.

However, some argue that SEI filing is different and that it makes more sense to make the filing requirement triggered only by the person stopping performing the duties of the office because disclosure will be made sooner to the time when the person is actually making governmental decisions rather than months later when the person's actual compensation runs out. Also, by requiring disclosure earlier, the person will not need to disclose information later after acquiring additional economic interests that were not held at the time of decision-making and should therefore have no bearing on whether the person had a conflict-of-interest at that time. In 1996, staff decided on a separate rule for SEI filing that required a person to file an SEI upon no longer performing the duties of the office. Subdivision (b) of proposed regulation 18722 is intended to codify this advice by declaring that for SEI filing purposes, the date of leaving office is the date that a person is no longer authorized to perform the duties of the office and stops performing those duties of making, participating in making, or attempting to use the official position to influence a governmental decision.

Mr. Russo went on to explain the SEI filing obligations of a person serving as an alternate or designee on a board or commission. He said that, in advising agencies on their conflict-of-interest codes, staff has advised that there should be no difference between someone who serves as a regular member of a board or commission and someone who serves as an alternate or designee. The rationale is that if one is authorized to make governmental decisions, one is required to disclose one's financial or economic interests, regardless of how often that authority is exercised. Subdivision (c) of proposed regulation 18722 declares that every person who holds an office as an alternate or designee shall be required to disclose his or her economic interests in the same manner as any other person holding the office.

Mr. Russo said the last question deals with the impact on the individual filer when the filing officer fails to perform some duty or provide some notice. While the Act imposes filing duties on individuals, it also imposes duties on filing officers and filing officials, which include supplying forms and manuals, performing a facial review of the documents filed, notifying filers of a failure to properly file, and reporting filing violations to the appropriate authorities. Under the Act, the duties of filers and filing officers are separate. There is no correlation within the Act between those separate duties, but some individuals have tried to link those duties by saying that a failure by a filing officer to fulfill one of its duties relieves the individual of a duty to file. This regulation is intended to clarify that these filing obligations are distinct and that the individual has an obligation to file on time and correctly, regardless of what the filing officer has done or failed to do. Proposed regulation 18117 formalizes this approach through a declaration that the failure of a filing officer or filing official to comply with any duty or provide any notice of any filing or disclosure obligation shall not affect the duty of a person to file statements and reports disclosing information as required by the Act or any conflict-of-interest code.

Chairman Randolph noted that the language on line 8 and 16, referring to "making, participating in making, or attempting to influence," should more closely parallel the statute to read "making, participating in making, or using his or her official position to attempt to influence a governmental decision."

Mr. Russo said he had a revised draft that includes that additional language which he can add upon submission for adoption.

Scott Hallabrin, with the Assembly Ethics Committee, said he did not plan to speak but had a comment to add regarding leaves of absence. He suggested that the Commissioners might want to address the issue in the regulation. If read literally, subdivision (b) of proposed regulation 18722 if a person is on a leave of absence, they no longer are authorized to perform the duties and they have stopped performing the duties. The Assembly has a lot of employees who go on two or three month leaves of absences during election time and have been told by Commission staff that they do not need to file a leaving office SEI. Also, the Assembly and agencies have intermittent or seasonal employees, and some are in designated employee categories. Mr. Hallabrin said he reads the regulation to say that these employees are still authorized to perform the duties but are not working at that point so that does not trigger a leaving office statement. He wondered if that was correct.

Commissioner Downey asked whether elected officials elected in November but sworn into office in January are considered to be performing the duties of office prior to being sworn in. He wondered if subdivision (a) suggests that if a person is elected but not yet in office and beginning to perform duties of the position by attempting to influence a governmental decision, then the filing date would be prior to the swearing in.

Mr. Russo said yes, that would be correct. For elected officials, candidates already have an obligation to file SEI's, so there is less of a concern than on individuals who have no required disclosure. The point of the proposed regulation is that if one is newly elected but not yet sworn in and is trying to use the official position to influence decisions, then the public has a right to know what economic interests the official may have of his own.

Commissioner Downey added that he likes the policy but is concerned about who decides at what point the influence was first exercised. He further commented on subdivision (b) regarding the leaving office definitions, wondering who makes the determination of the point at which the person was no longer authorized to perform the duties of the office. He said he was leaning toward the universal rule, parallel to the revolving-door ban rule, because it is an easy, bright line test that says one leaves office when one stops getting paid.

Chairman Randolph asked to hear from TAD, since there is a body of advice available on the matter.

Ms. Cassady explained that generally, people know when someone leaves office. She said staff prefers the proposed language in the regulation because there is a problem with tracking people down a year or 6 months after they leave the agency, since many either retire or move out of state. If the date of leaving office is at the end of the point at which vacation and other leave is used up, then that could be as much as 6 months later, which makes it extremely difficult to locate the person.

Commissioner Huguenin added that people need to understand that the 30-day period is essentially the exit-interview process; the closer we can get to the time that they are actually vacating the office, the more likely staff can get the document.

Commissioner Remy said that he recognizes that the majority of public service employees are in local government, not state government. He wondered how this would work for a city manager in another state who is told he will be the new city manager in a California city and assumes office a month later in the California city. He asked when the clock starts for the filing period begins for such an individual.

Ms. Cassady replied that for a city manager assuming a new position, the clock would begin at the point at which the individual actually takes on some official action for that city.

Commissioner Remy said that it says "acceptance."

Mr. Russo clarified that part applies in the case of appointments, which is subject to Senate confirmation or confirmation by the Council on Judicial Appointments, so that would not apply to the local official. The local official's time would begin upon assuming office.

Chairman Randolph asked whether a statutory reference should be added to clarify that it applies to appointments.

Ms. Cassady said that the term "appointments" is very narrow, just those subject to Senate confirmation and the Council on Judicial Appointments. The local official would have 30 days from the time he makes his first official action or is sworn in.

Commissioner Remy asked when the reporting period begins for a city manager leaves on friendly terms and is asked to stick around for 4 months but another city manager will be in his place.

Mr. Russo said that this regulation would cover when he stops acting as city manager. He would file his SEI once he is no longer actually performing the job. This intends to deal with situations where the person is out the door but is continuing to fulfill the duties so that there is disclosure for that period of time when the person is actually making or participating in making governmental decisions.

Chairman Randolph said that it applies when someone is told to clean out his desk tomorrow, but the agency is contractually obligated to pay the person for 4 more months.

Mr. Russo agreed, adding that the person would file when he cleans out his desk and is on his way out the door.

Commissioner Remy asked when the person would file if he is not cleaning out his desk but is still on the city payroll but on contract for the next 4 months to assist in transition.

Mr. Russo responded that he would file after that 4 months is up. The focus is not on compensation, rather, the performance of the duties.

Commissioner Downey said that there cannot be two people in the same position, instead, the old city manager is going into a consulting phase, which may be a designated position.

Mr. Russo stated that if the person is taking a different designated position, then he is not required to file another statement. He would need to file a statement when he leaves the consulting position. Behind all of these rules is to accomplish the practical effect of having disclosure for the entire period of time that the person was making or participating in making governmental decisions, but not overlapping to make the person disclose whatever his economic interests are when he is day-trading on the beach in the Bahamas.

Stephen Kaufman, from Kaufman Downing, LLP, commented on the issue of the elected official assuming office statement. He said he was hearing that the new regulation would present a moving target, depending on whether the newly-elected official decides to become active in government before taking office, and he urged a bright-line standard instead. The reality is that the public is always a few months behind on knowing the exact investments that an elected official has because they file on an annual basis. One who takes office will have filed a candidate SEI when they were running for office and will ultimately file an SEI shortly after assuming office, so the gap in time is negligible. But to say to candidates that if they become active and begin talking with the Legislature before taking office as Governor, then they must file on the day that those discussions begin but that another person who takes office as Treasurer does not have to file until a month later is to create a moving target from a filer's perspective as well as from an enforcement perspective.

Chairman Randolph said she thought that was a good point. It is not unheard of to impose obligations on newly elected officials like open meeting requirements, but it does seem odd to require a candidate statement and then have some ambiguity about when they are required to file the subsequent assuming office statement. On the other hand, for other appointed officials or employees who are assuming office but do not have any specific swearing in moment, there may be the need for some flexibility in the rule to capture those individuals when they begin their jobs. She said she did not know how to resolve the problem and is uncomfortable with having a different rule for elected officials than for other officials.

Commissioner Downey wondered if staff could consider the issue and come back with alternative language. He agreed that Mr. Kaufman's points were well-taken.

Commissioner Huguenin said that he prefers bright line rules and that the initial drafting of the regulation is good. There are always issues that people can throw out, but the Commission has an advice system to interpret these issues when necessary. He said it is helpful to be clear on the face of the regulation if it applies only with certain circumstances.

Chairman Randolph directed staff to bring the regulation back for adoption, with alternative language options to address the concerns discussed.

Item #9. Resolution of the Commission Regarding Enforcement of the Political Reform Act.

Chairman Randolph explained that this in an important issue because there is a lack of clarity in the Act regarding private enforcement actions and how these cases are brought in reality. Private enforcement of the Act is very important. There are plenty of examples where a plaintiff may have an urgency brought by an impending election or the plaintiff may have a difference of opinion with the Commission about a legal interpretation of the Act where it is essential to be able to quickly call upon the Superior Court to resolve these issues. However, the statute that permits these cases gives the plaintiff the opportunity to file a demand with the Commission, and within 120 days, if the Commission had declined to respond or act, then the plaintiff can move forward. The law does not cover a scenario where the Commission is planning to take action, but is not taking action within 120 days because the Commission may either 1) proceed administratively, where due process requirements do not allow for the prosecution of a case within 120 days, or 2) file a civil suit, which is an inappropriate use of resources for a relatively minor and straightforward violation of the Act when the administrative process could have resolved the issue. This results in some ambiguity in the law when the Commission plans to move forward but cannot do so within 120 days and a plaintiff has filed a lawsuit. She added that one of the successes of the Enforcement Division (ED) is that it can move forward on straightforward cases such as late contribution reporting cases, SEI non-filer cases, and major donor cases with some amount of resources and get them prosecuted quickly. The Commission has collected over $200,000 in fines in the major donor program since 2002. This is a way to ensure enforcement of the Act and raise the profile of these violations so that donors understand that it is their responsibility to comply with these rules. Chairman Randolph advised that the Commission has a responsibility to ensure that cases brought and violations prosecuted are real, not based on guesswork. The statute creates a quandary for the Commission, where staff are to bring legitimate cases but are limited by a period of time, particularly in a situation where a demand was made for hundreds of cases. She added that she is not sure what the legislative answer is, because it is not appropriate to completely preclude private attorney general actions and because the Commission should not be able to put a case in its back pocket and not move forward at all. An option to consider may be to allow the Commission to either act within 120 days or indicate within 120 days that it plans to act and then allow a second time frame by which it needs to act. Or perhaps the solution may be to say that a private litigant may bring only a certain number of cases at any given time so that it is at the level to which the Commission may be able to respond.

Commissioner Huguenin commented that the private attorney provisions of the statute are a fixture of the universe in which we live. Even if we did not like them, there they are. It seems fair to discuss the issue and perhaps adopt a resolution requesting that the legislature rethink the timeline of 120 days. Given that the Commission is bound by the 120 days and that its process delays the Commission beyond that, the system is bound to have the kind of potential difficulty that has arisen and brings the issue to the Commission. What is unusual about the issue in this case is the volume, rather than the fact that there is a conflict between the Commission's process and the private attorney general action. He suggested bearing in mind what has really brought the issue out, which is the volume as opposed to the issue itself. He does not know how to deal with the volume. He is uncomfortable with the Commission essentially engaging in reproving private litigants publicly when they are attempting to enforce the Act. On the other hand, to the extent that what has been done is viewed as unreasonable and as an abuse of the Act, the Commission probably has an obligation to say so.

Mr. Ryan said he was providing the Commission with his prepared statement and a sampling of letters he received from the FPPC. He commented that it was ironic that the Commission, having been created when the people of California enacted the Political Reform Act of 1974, would contemplate asking the legislature, whose previous inaction and malfeasance led to the passage of the Act, to limit the power of the people to address violations of the compliance laws found in that very same Act. As the plaintiff who filed the 931 complaints against political contributors for violation of the major donor laws, he said he must oppose the Commission's adoption of the proposed resolution as a mischaracterization of his lawful actions and urge the Commission to take this opportunity to investigate the circumstances surrounding this resolution and adopt specific reforms to correct the enforcement staff's inadequacies when dealing with major donor violation investigations. He read from a letter dated January 13, 2004 which stated that the Commission had concluded its investigation of the major donor reporting complaints for the November 5, 2002 general election. Mr. Ryan said that the letter placed into his hands the responsibility found in Section 91007 of the Act. Contrary to the proposed resolution, the letter would confirm that the Commission is no longer concerned with the 2002 general election. Thus, no duplicative effort exists.

Mr. Ryan also mentioned that he is troubled by the tone of the resolution concerning the declaration that many of these violations are of a minor nature. All of the complaints involve the contribution of over $10,000 to elected officials, and many involve substantially greater amounts of money. Also troubling is a statement, "these prosecutions will undoubtedly have the effect of discouraging participation in the political process by contributors who will fear substantial fines and attorneys fee awards for unwitting violations of the Act." Mr. Ryan added that these donors are not unsophisticated "mom and pops," they are players seeking access. It is astounding that the Commission might believe that accommodating major donors to be able to follow the money or seek redress when violations occur. He said he believed that the resolution was created in order for enforcement staff to avoid the responsibility and embarrassment for a record of lackluster effort and the prosecution of major donor violations. In fact, last year, the Commission brought in about $1 million from all violation sources, with a budget of about $6 million. Under this litigation, the State of California could receive up to $1.5 million with zero cost to taxpayers. It is outrageous that only 26 major donor investigations were brought before the Commission last year. He added that even on today's agenda, only three individuals have been brought before the Commission for violations of the major donor requirements, two of which have come before the Commission to avoid litigation.

Mr. Ryan furthered stated that the resolution calls on him to drop his civil action but does not explain how the Commission will deal with the hundreds of violators identified by Mr. Ryan, some of whom are nearing the statute of limitations. Mr. Ryan's project started less than 30 days before he filed his complaints. Had paper filing information been more readily accessible from the Political Reform Division of the Secretary of State's office to the public as it is to the Commission, he could have reduced his initial 931 complaints to the more accurate and manageable 220 in the same amount of time. He added that, given the enforcement staff's resources, it seems incongruous that 120 days is inadequate time for review when one person with a computer and the internet could cull 931 cases from a database of tens of thousands of names in a quarter of that time. He mentioned that the Commission's major donor program

investigator Jon Wroten had the time to pull Mr. Ryan's form 700 from the special district that he is elected to two weeks after Mr. Ryan filed his complaints with the Commission, which is possible an abuse of prosecutorial powers. Mr. Ryan said he thought the Commissioners would be more concerned with the chilling effect to whistleblowers than to the flow of access money to politicians. Mr. Ryan said he can only ascertain that enforcement staff has been derelict in their responsibility to the Commission and the people of California. It is for precisely this reason that private party action is an important component of the Act. Staff's embarrassment could have served as a catalyst for improvement; instead, staff is diverted this energy into devising a resolution that would prevent private enforcement from outdoing them ever again. Mr. Ryan concluded by asking the Commission to oppose the resolution and direct the executive director to review the major donor program policies and procedures to increase its efficiency and effectiveness. He offered to assist the director in such a review. He added that in the packet he submitted to the Commission, there is an error in an editorial of his home-town paper, where it identifies the Commission as not being accommodating of information. Mr. Ryan has since talked to the editor.

Chairman Randolph said that the article was not in the packet but that she separately provided the Commissioners with copies of the editorial.

Mr. Ryan said he did not tell the editor of the Press Telegram that it was the Commission that withheld information. However, in the sampling of the Commission's responses that Mr. Ryan received, there is a December letter that critiques the methodology he employed to get these names. The Commission was therefore aware of what Mr. Ryan was doing and would tell him that some of the complaints were unfounded but would not say why. Mr. Ryan said that he believed staff understood the discrepancy that paper filings were not updated and readily available. He said it was almost comical that he would show up at the Political Reform Division of the Secretary of State's office and be directed to the one computer that would have had a log of all the paper filings, work for about an hour, and then have a supervisor say that the public computer was stripped of that authority several years ago. He said he was told to go behind the counter and sit at an employee workstation to get access to the information. Mr. Ryan stated that that is not "readily available," though the office did accommodate him eventually. He added that it led to a lot of people being identified that should not have been identified, which contributed to the increased workload of the Commission. All of the cases were given to the Commission in good faith; there was not the intent to inundate the Commission. Almost half of the cases were nearing the statute of limitations. He added that all of his actions have been done in good faith, and his offer to help the FPPC is a legitimate, good faith offer.

Stephen Kaufman, from Kaufman Downing, LLP, addressed the Commission as President of the California Political Attorneys Association. He applauded the Commission for addressing this issue, which needs to be addressed in the larger context than the Ryan lawsuit, and it appears that the Commission recognizes that. The streamlined enforcement program was adopted a couple of years ago to avoid exactly the present situation and to encourage the filing of delinquent campaign statements by major donors and prompt settlements without the need for unnecessary resources being expended by the Commission. Now, there are a number of donors to California campaigns who have been named as defendants in this lawsuit who face a decision of whether to file their delinquent statements and settle with the Commission while still facing a potential civil

judgment of 100% of the amount that they purportedly did not disclose. He suggested that while there are ways to look at the 120 day period, the issue is that Defendants in the lawsuit did not receive any notice from the Commission during the 120 day period. Had they received some notification while the Commission was investigating the matter, they may have been prompted to take action or come before the Commission to attempt to resolve the issue. Otherwise, these defendants are at the mercy of the process. Mr. Kaufman further suggested an enunciation of a policy that dictates a second phase during which time there is nothing to preclude the Commission or these donors from attempting to settle the matter under the streamlined enforcement program at this point. The question is what bearing such an administrative order would have. It appears that there is a hole in the statutes such that this issue is not addressed. He opined that there is nothing precluding the Commission from entering into an administrative order to settle a matter on behalf of one of the defendants, thereby either precluding the plaintiff from obtaining a civil judgment against that defendant or reducing the recovery, given that the purpose of the private attorney actions is that they are brought in the name of the state, which is entitled to 50% of the recovery. He stated if the Commission has already made a decision to settle its part of the case with the defendant, query whether the plaintiff would still be entitled to recover on that portion of its claim in court.

Commissioner Downey said the statute on its face says that no civil action may be filed under sections 91004, 91005, 91005.5 with regard to any person for any violations of this title after the Commission has issued an order pursuant to 83116 against that person for the same violation. He asked what would happen if one of the Ryan defendants came forward, admitted an inadvertent violation, and signed a stipulation that was approved by the Commission.

Mr. Kaufman said he would argue that while 91008.5 precludes the filing of a civil action but does not speak to a judgment. If the Commission articulated this in a policy, then an administrative order, even after the filing of a civil lawsuit, would preclude a judgment in a civil lawsuit.

Commissioner Downey clarified that, now that a civil suit has been filed, the Commission is not prevented from commencing and administrative resolution of violations on the part of the defendants in the civil action.

Mr. Kaufman said he was correct. He suggests that the statutes may preclude the filing of a civil action by the Commission, but not an administrative action.

Commissioner Downey said he was interested in hearing the Commission's counsel's view on the question.

Chairman Randolph noted that she thought there was a provision in the 91000s that says there cannot be inconsistent judgments.

Mr. Kaufman said that the provision is in section 91008.

Chairman Randolph added that it implies that there may be more than one suit, but the first case to be resolved should stand.

Mr. Kaufman responded that this section deals with precedent, but he does not know that the provision relates back to an action filed pursuant to section 91007. Section 91004 provides for other civil actions that may have been brought by the Commission, and section 91007 provides the mechanism for these types of actions where an individual makes a demand on the Commission and then proceeds with civil action. Section 91008 applies to all potential civil actions, not just the ones covered under section 91007.

Chairman Randolph responded that she can see that argument, but it all depends on the judgment of the superior court judge. She is sympathetic to the notion that, if the Commission did have pending cases, then the Commission should not be precluded from resolving those pending cases. However, the statute is not clear one way or the other.

Mr. Kaufman added that the focus should not be on this one particular set of circumstances but on the larger picture.

Chairman Randolph agreed.

Mr. Kaufman continued to say that the focus also needs to take into account that in a way, these suits, at least the private suits being brought under 91007, are being brought in place of or in the name of the Commission or the state of California to obtain a judgment that is to be shared at 50% with the Commission.

Chairman Randolph clarified that the judgment would be shared with the General Fund, not the Commission.

Mr. Kaufman added that on that basis, it seems that the Commission would have an interest in expressing its viewpoint and weighing in on how it views its right or ability to obtain that 50% judgment when it has specific policies and practices in place to resolve these type of issues.

Chairman Randolph noted that Mr. Kaufman's and Commissioner Huguenin's points are well taken that perhaps the focus should be less on these particular cases, and the Commission could consider not referring to this particular occurrence in the resolution. It has happened before, and the concern is the statutory structure and the Commission's responsibilities under the Administrative Procedures Act (APA) and what the Commission can realistically do in 120 days. Another concern is how the Commission can exercise its jurisdiction in the most effective manner that does not necessarily involve a race to the courthouse.

Patrick Manzhardt, counsel for Norm Ryan and attorney from Los Angeles, said he wanted to address some of the issues discussed. First, he commented on what prompted this resolution, and as far as he can tell, it came about because a number of political lawyers in different cities have clients who were sued by Mr. Ryan and did not like it.

Commissioner Downey said that Mr. Manzhardt was wrong. When the complaints were received, the Enforcement Division alerted the Commissioners, who were very concerned. He

added that as far as the Commission knew, the political bar in the state had no knowledge of what was going on at the time. That was the genesis.

Mr. Manzhardt thanked Commissioner Downey for making that clear. He said that, regarding the 120 day problem, it is not as if Mr. Ryan went after these individuals 120 days from the date that liability began. In some cases, it was two, three, or almost four years later. So, when the Commission says it has a 120 day problem, it is 120 days from when Mr. Ryan notified them of his request to file a civil action. In some of the cases, if Mr. Ryan had not filed his letter with the Commission, the statute of limitations would have already run by now. The Commission has ample time if it is otherwise previewing the campaign reports. Further, he added, some of the cases had been closed. He noted that Commissioner Downey's hypothetical was interesting because it is not a hypothetical. There was one person on the agenda, Stuart Moldaw, who had apparently asked the Commission to fine him in order to be clear of further liability under the Act. Mr. Manzhardt said he was concerned that others who have been named in the Ryan lawsuit will waive a "get-out-of-jail-free card" from the Commission. Mr. Manzhardt added that his answer to that is, "well, how nice for you." He would hope that the Commission told the person that the settlement makes the person straight with the Commission but that they still had to deal with Mr. Ryan.

Chris Campbell, an attorney with Geragos and Geragos in Los Angeles, a defendant in Mr. Ryan's action, made a few points. First, he agreed with all of Mr. Kaufman's comments in his July letter. He added that there needs to be some mechanism whereby a defendant in an action like this is able to get relief from the administrative agency. Additionally, none of the defendants received any notice that there was a problem, and this is an important issue. The Geragos and Geragos defendant is on the hook related to a $2,500 campaign contribution, but the firm has spent probably $8,000 in attorney's fees dealing with Mr. Ryan and his attorney. The laws need to be addressed so that one who made a $2,500 campaign cannot land in court three years later when a letter from the Enforcement Division would have otherwise have alerted them to the problem. Most defendants in that type of case would opt for the streamlined procedure and voluntarily pay $400, as set forth in the schedule. As to the specifics of this complaint, Mr. Campbell observed that it is incredible how the plaintiff has conducted this litigation. The plaintiff said that the litigation was brought on behalf of the people of California, but that comment is questionable at best, particularly in light of Mr. Ryan's comments that were published in the last few days in the Press Telegram where he has indicated that he will give the bulk of the recovery to the Individual Rights Foundation, an entity which specializes in bringing litigation to further libertarian and other conservative causes. So, this is not about making the state whole. Mr. Campbell said that if a defendant settles with Mr. Ryan, the defendant must write a check to the Law Office of Patrick Manzhardt and Mr. Ryan. He added that there is no provision that half of the private settlement will go to the State. A defendant is in the position of having paid Mr. Ryan and his attorney 90% of the initial demand. He stated that it is an outrage that they would be able to "shake down" these defendants, who in doing so have actually received no protection for the violation.

Karen Getman, with Remcho, Johansen, and Purcell, said she was going to urge the Commission to adopt an even stronger resolution, make suggestions on a different method of notifying targets of a complaint like this in the future, and make suggestions on a legislative solution. She agreed

with Commissioner Huguenin and Chairman Randolph that the private attorney general function is incredibly important, and its use should not be discouraged in a proper context. She said it is a joke to think that this is a proper context. Here are two individuals who have admitted that they filed 710 frivolous complaints that the Commission was expected to deal with in the course of 120 days on a budget that has been drastically reduced and with a staff that can barely keep up with serious enforcement issues. To think that this is serving the public interest is a joke. It is not serving the public interest but is rather a chop-shop to make money. If this was truly in the public interest, then of course, when the individuals who were notified of their delinquency in filing, filed with the Commission and with the Secretary of State, and paid the fine, then the plaintiff would be willing to step aside and agree that the public interest has been served. If the plaintiff believes that he is due some payment for his time, then that would only leave the matter of attorney's fees. She commented that there is nothing to be served in the public interest by allowing Mr. Manzhardt and Mr. Ryan to gain some financial windfall from cases that have been fully resolved to the satisfaction of the state. She added that there are a number of cases where Mr. Ryan filed the complaint but has not served the individuals. It is particularly unfair that the Commission has 120 days, but Mr. Ryan can wait as long as he like before serving the remaining people. She said that it is her best guess that he is using the funds from the initial settlements to pay process servers for the next set. Ms. Getman said she has a client who has now signed an order with the Commission, has been named as a defendant on the complaint, but has not been served. She added that there is no public purpose that could proceed from her client being subject to a separate parallel civil lawsuit at a future time when Mr. Ryan gets around to serving her client. She urged the Commission to make the resolution stronger by pointing out that while there is a good reason for private attorney general actions, the present case is not one. The purpose of the Act is fully satisfied by the voluntary filing and subsequent fining of delinquent reports by this Commission and no further public interest is served by a parallel civil proceeding that puts money in the pocket of a private attorney general.

Ms. Getman said she understands why the Enforcement Division would not want to notify targets of an investigation. However, she said there may be a way to conduct a notification that would serve the purposes of the Commission, the targets, and of the public. This is all about the public purpose. She suggests that should anything like this happen in the future, the Commission should take some steps to notify the targets by saying that it does not know whether the target committed a violation but that it has received a complaint and asks for the target to come forward with any information that would help the Commission resolve the matter. It would place a target on notice that a complaint was received whether there was any merit to it. She said she realizes that sending out 931 letters is still a strain on the Commission's resources, and if it cannot be done, then there are other ways of providing such notice, perhaps through the Commission's website or electronic mailing. If someone was filing such a complaint in the public interest, then that individual would likely welcome the filing of delinquent reports within that time period and would be happy not to have to proceed with a civil action. The civil action is not available to make a person money; it is there to get the reports on file and to fine delinquent reporters.

Ms. Getman added that there is some room for movement under section 91008.5, which says that the civil action may be filed but does not outline what happens when a civil action is filed or what happens when a civil action is filed but not served. It seems there is some room for the Commission to interpret the provision by saying that there should be no additional money

judgment if the Commission has already imposed an administrative fine, that the public interest has already been served, and in the absence of extraordinary circumstances, the civil action should be dismissed if the Commission has issued an administrative order.

Commissioner Downey asked whether she is suggesting that this would be an appropriate regulation under that statute, even without any legislative intervention.

Ms. Getman responded that she thinks the Commission has quite a bit of room to maneuver under that statute. In addition, she said that the biggest problem here is not the 120 days but that the statute forces the Commission to *resolve* the matter within 120 days. If the statute was amended to allow the Commission to *take jurisdiction* of the matter within the 120 days and satisfy the private litigant that the Commission is actively pursuing an investigation, then it seems that would serve the purposes of the Act. It may be that if the Commission has not issued an order within a year, or some period of time, then the private litigant could then go forward.

Jason Kaune, from Nielsen, Merksamer, Parrinello, Mueller, & Naylor, LLP in Mill Valley, said that Mr. Kaufman addressed the concerns of the regulated community well. He urged the Commission to not change the resolution in any way to eliminate the focus of this particular abuse. This situation is an abuse that deserves, if not censure, some scolding. From the perspective of the regulated community, the suit was filed for some, served for some, and law abiding individuals and companies receive word that they are out of compliance. The plaintiff said he had a difficult time finding the public information. Mr. Kaune said that if he was an attorney practicing in any other area of the law, he could not use the excuse that it was difficult to find the disclosures. The disclosures are there and could have been found, and it is outrageous from the perspective of the law abiding community to have their names brought out, legal departments involved, and expenses incurred to address this lawsuit. He added that there are many people who had to respond to this lawsuit when their names were brought out in the media or elsewhere when they had followed the law and did not deserve to be named in the suit.

Chairman Randolph echoed the point about looking at filings at the Secretary of State's office, which is sometimes difficult and time consuming. But, Commission staff is obligated to take their time and get it right. She agreed that it is not fair to say that one had a hard time finding the documents so they went ahead and filed suit anyway.

Mr. Ryan commented that when he filed suit, people came forward with their filings and he was astounded. He said that when he went through the documents, he asked the office of the Secretary of State whether the documents he was reviewing was the complete filing and they said yes. After he heard from people who had filed, he called the Secretary of State's office which later said that not all paper filings had been updated. It was not that it was *hard* to find the information; it was that government officials were telling him that it did not exist. Mr. Ryan said he was not going to take the rap for a government that refuses to admit to its mistakes. He further commented that the first phone calls he received the day the suit was filed convinced him that there might be a problem, so he delayed service in order to not serve innocent people. He apologized to those people who he had to delay in serving. He suspended the program to get out the 900 services by a month until they got it right. Those who were eventually identified as having no paper filing status were sent a service and given the option of responding to the

service or not accepting service and instead being physically served. He said that those who say they were not served may or may not have been served, depending on their definition of what "being served" is. Mr. Ryan further stated that when the Commission sent him a letter saying that it would be taking action on a defendant, he eliminated the defendant from his list. To Mr. Ryan, the 120 day period was for the Commission to announce its jurisdiction, not the final outcome, and he believed the statute requires only that. If the Commission said nothing about a defendant, then after 120 days, he would move forward against a defendant. There was no expectation on his part that the Commission would complete an investigation and administrative action within 120 days. He said the law only says that the Commission has to notify Mr. Ryan of whether the Commission was going to do it. He said he was not expecting miracles, only a statement by the Commission that it would take care of the problem, which it did not do. He said the Commission actually told him to the contrary, and that is different than telling him that the Commission could not handle what was given it.

Chairman Randolph stated that the Commission could not handle what was given it because it is very difficult to do such cases in that short period of time and that it did indicate that cases were still pending and being investigated.

Mr. Ryan said that the statute requires the Commission to identify them.

Chairman Randolph said that Mr. Ryan's point is that he did not expect the Commission to complete the cases within 120 days. The Commission notified Mr. Ryan that it has an ongoing program, a streamlined program, and cases that did not qualify for the streamlined program and are pending for other reasons. It is true that the Commission did not have time to go through every one of the 931 cases line by line to say for each one why it is that the Commission decided not to proceed.

Mr. Campbell said he wanted to make a correction about a factual misimpression that Mr. Ryan and his attorney have been acting reasonably. In one of the articles that they have supplied to the Commission, they make it look as though they filed the first amended complaint and dismissed 700 defendants. That is not the case. On May 6, Mr. Campbell's office served Mr. Manzhardt with a motion for sanctions of $270,000 and the following Tuesday, Mr. Ryan filed the first amended complaint.

Commissioner Downey reminded people that the Commission is here to consider a resolution, not the infighting in the lawsuit.

Mr. Manzhardt agreed but said that when a statement is made and is not answered, it is assumed to be true. He stated that the circumstances surrounding filing the first amended complaint are as Mr. Campbell said, but the dismissal of those persons who had complied with the major donor requirement was done independently of the first amended complaint. He added that Mr. Ryan and Mr. Manzhardt filed a dismissal without amending the complaint.

Chairman Randolph began a discussion among Commissioners, since there was no more public comment. She said that the issue raises many problems, but they are mostly solvable problems. The major donor filings are unique in that they are remarkably easy to find if one takes the time

to find them. There are no private litigants trying to enforce some of the more complex conflict-of-interest statutes that the Commission has a hard time enforcing because it cannot pay business consultants to figure out what the foreseeable financial effect of a particular decision is. It is not surprising that major donor violations are suddenly considered the most important violations of the Act. She said that she believes there are legislative fixes to ensure that this does not happen again, and the Commission can review its internal processes to determine the most effective method of ensuring that the Act is enforced consistently and fairly. She said that she supports the proposed resolution and that it is important for the Commission to make a statement on these types of cases.

Commissioner Remy agreed with the direction but said he is troubled with the resolution. He wants to avoid getting in the middle of competing law firms. The fundamental issue is whether the process works under existing regulations and statutory authorities, and it seems the answer is that it does not work as well as it should. The resolution should more vigorously point out that the Commission needs to examine whether it can work better within its regulatory authority and what statutory changes are needed to protect people from the potential of being victimized, regardless of whether they were or were not. He added that he would like to add something about the expectation of the Commission being able to meet a multiplicity of responsibilities with a diminished budget and staff. With more workload and less staff, this impacts the Commission in terms of postponing regulatory considerations, losing employees, or being unable to meet the guidelines and deadlines in the Act, and ultimately, the public ends up having to pay for it. He said he thought the resolution should capture those kinds of thoughts, with the critical issue being solving the problem.

Commissioner Huguenin said he is uncomfortable with the some of the "whereas" phrases of the resolution, since they are like findings of fact. He has seen no evidence because nothing has come before the Commission except the resolution on its face, but he would like the opportunity to read the pleadings sometime in the future. He said the real issue is what the role is of the Commission in protecting its jurisdiction to enforce the policy that it has already decided on about what an appropriate remedy is for a violation of the obligation to file a major donor statement. The Commission should look at how it protects and perhaps extends its jurisdiction to apply that policy and consider with its counsel how to apply it in the context of this particular dispute that has arisen. He said he is not interested in using this pulpit to slap people around, regardless of the motivations of the plaintiff. It is not the Commission's job to make such a determination. The Commission's job is to protect its jurisdiction, extend it if possible, and ensure that the policy that has been adopted is implemented. He said he will not vote for the resolution as it stands but would entertain it if it can be reworked to incorporate his suggestions. He added that he did not think it could be rewritten during the meeting, and even if they did, he did not think it would have any legal effect anyway.

Ms. Getman asked for one last comment to articulate why a resolution is important. She said that this is not just a dispute between two private litigants and that it is about the enforcement of the Act. The resolution can inform the court what the Commission believes is in the public interest in major donor cases and how it handles major donor cases. It is important for the Commission to inform the Superior Court because it is the first line of the interpretation of the Act and is given great deference by the courts in determining what is in the public interest and

how best to proceed in a prosecution. There is nothing in the Act which says that it is automatic for the Superior Court to afford a judgment equal to the full amount of the delinquent major donor filing, and it is important for the Commission to inform the Court what is a potentially proper judgment and what is the public interest. While the resolution may not get to the Court from the Commission, there are many people who would take the resolution to the Court, and the Court would likely appreciate hearing from the Commission and its point of view on these cases.

Commissioner Downey said he is inclined to vote for the resolution because of the potential for overload under an enabling statute. It says that we need assistance from the legislature or perhaps the regulated community. If the resolution helps someone in the lawsuit, it only helps because a correct statement of the Commission's policy is made. He noted that the Commission is the first line of determining the appropriate sanction for violations of the Act. It has a streamlined program with guidelines set by the Commission, and it is important that it has the steering oar on the prosecution of violations of the Act. He said he could not find any disputed factual underpinnings in the "whereas" clauses. The two resolutions at the end are the thrust of the resolution, where it asks the legislature for help and concludes by asking the plaintiff to dismiss the civil actions to avoid cases that are potentially duplicative of the Commission's administrative prosecution program for these types of violations. If the plaintiff has the purity of thought suggested by Ms. Getman and that this is really a public interest matter, and as long as the defendants are doing what the Commission has determined is the correct thing, then he said he cannot see why the plaintiff would not go along with the Commission's determination. The resolution also speaks to Mr. Kaufman's concerns under section 91008.5 that if the Commission is able to act on the enforcement of a violation of the Act, then that should carry a lot of weight with the parties and with the judiciary. He said he supports the resolution in its current form.

Chairman Randolph said she would entertain a motion to approve the resolution as drafted and would urge the maker of the motion to be open to potential edits and those who are hesitating to support the resolution to make such editing suggestions.

Commissioner Downey moved to adopt the resolution as written.

Chairman Randolph seconded the motion.

Commissioner Remy said he is in favor of the Commission going on record but is not in favor of the resolution as written. He added that he is not sure that it can be rewritten at this meeting to capture the points made. He agreed with Ms. Getman that it could be more focused in terms of what the Commission would like to accomplish in the resolution.

Commissioner Huguenin said that if there was something in the resolution that directed the Commission's legal staff to do what was necessary to seek to make an appearance in the litigation to bring the Commission's enforcement policy on major donor cases before the Court, that may be appropriate. He does not think that the current resolution would bring that information to the Court. If the Commission will seek to protect its jurisdiction, it must articulate the policy standard for a violation of the major donor requirements, then it might need to consider going into the Court to say that.

Commissioner Downey responded that the Commission cannot do that, that this is the best the Commission can do.

Mr. Huguenin said he is not sure of that until he has heard from the Legal Division. He said he is not willing to vote for the resolution as written but is willing to look at a different one.

Chairman Randolph noted that she does not anticipate that the resolution will resolve the issues, and the wording of the resolution says that the Commission cannot resolve the issues on its own. It is instead an opportunity for the Commission to go on record saying that private attorney general actions are appropriate, but in this instance and in past cases where hundreds of complaints are filed by the hundreds and the Commission already has a program to deal with the violations, they are inappropriate. It is appropriate for the Commission to make that basic statement to the Court and to the Legislature.

Commissioner Downey called for the vote. Commissioner Downey and Chairman Randolph voted "aye," and Commissioner Remy and Commissioner Huguenin voted "no." The motion failed.

Chairman Randolph suggested an alternative. She said that the Commission does not have the resources to become involved in the litigation and that she did not think it would be appropriate. She suggested that the Commission could present the Court with the Commission's fine schedule for the major donor program to let it know how the Commission resolves such cases in the ordinary course. Another option is to revise the resolution and bring it back at the next meeting. She said she is not sure exactly what else Commissioners would like to add to the resolution.

Commissioner Remy replied that the resolution should be less specific on the individual issue before the Commission because it seems to be argumentative. In a broad sense, the fact of being inundated is important, and there should be some mention of the real difficulty that the Commission has when faced with the reality of staff capacity. It is not clear what the Commission can and cannot do within the 120 day period and what it might seek as legislative relief. The resolution may also need to include some areas of regulations that the Commission will want to review to redress this issue. He has mixed feelings about asking the plaintiff to dismiss his action, since he seems to have a right to file the suit. If the other Commissioners want to leave that part in, then he would accept that.

Chairman Randolph asked if there would be any objection to directing staff to inform the court of the Commission's major donor program and the fine schedule for that program.

Commissioner Huguenin said no, that he would urge them to do so.

Commissioner Downey opined that defendant's counsel would have done that anyway.

Mr. Campbell mentioned that there is a timing issue since there is a case management conference set for July 28 or 29. The next court date after that is September 11.

Commissioner Downey added that he had no objection to Chairman Randolph's suggestion.

There was no other objection.

Chairman Randolph said that staff will inform the court.

Commissioner Remy asked whether there was any benefit in indicating that it is the intent of the Commission to move forward on the adoption of a resolution on this issue at the next meeting.

Chairman Randolph said yes, but she would prefer to phrase it as moving forward with consideration of the resolution and that it is the intent to bring it back at the next meeting. She asked if there was any objection to that.

There was no objection.

Chairman Randolph said the plan will be to bring a revised resolution for consideration at the next meeting, which is currently scheduled for September 1.

The Commission went into closed session at 12:45 p.m. and returned to continue the public meeting at 1:30 p.m.

DISCUSSION ITEMS

Item #10. Legislative Report. Staff: Executive Director Mark Krausse

Executive Director Mark Krausse mentioned that the Commission's sponsored bill, Assembly Bill 1391, which deals with how one more appropriately defines a state, county, or city committee, passed the Senate Elections Committee on July 13. He added that the Commission will receive an update at the next meeting and that things are moving quickly here at the end of the legislative session.

Item #11. Executive Director's Report. Staff: Executive Director Mark Krausse.

Mr. Krausse added that the Commission will miss Executive Fellow Theis Finlev and that he is happy to see Bill and Jeanette moving up in addition to Tina Bass joining the Commission staff. He added that there is a lot of activity in personnel.

Chairman Randolph added that staff is sad to see Theis leave to begin his new job. Staff enjoyed working with him, and he brought a lot of energy and perspective to the Commission. She said that he has done very good work, and she is sure he will continue to do good work in his new capacity at Common Cause.

Item #12. Litigation Report. Staff: General Counsel Luisa Menchaca.

There was nothing added.

Item #13. Discussion of New Strategic Plan. Staff: Executive Director Mark Krausse.

Chairman Randolph suggested that the Commission discuss and approve the mission statement and principles, vision statement, and agency description, then discuss any concerns about the McPherson Commission recommendations summary and the status of the prior strategic plan, and end with a discussion of the Commission's service area recommendations made by Mr. Krausse in his memo.

Chairman Randolph mentioned that, regarding the agency description, she did not see any point in including information about the various ballot measures because these are always changing and do not define the agency. She suggested keeping the agency description broad and based on the Commission's statutory responsibilities.

Commissioner Remy agreed with the Chairman about eliminating the language about budget and ballot measures. He said he did not agree with eliminating the part about the appointment process.

Chairman Randolph replied that the latter was actually a drafting error and will be added.

Commissioner Remy moved approval of the redrafted agency description.

Commissioner Huguenin seconded the motion.

Commissioners Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which passed with a 4-0 vote.

Chairman Randolph noted that one of her goals for implementing the strategic plan is to raise the profile of these background documents by perhaps giving them more prominent play on the website or posting them in the lobby to make them more a part of the daily life of staff and those who interact with the Commission. The mission statement in particular should be more visible. She said it seems the existing mission statement seems to cover the Commission's goals and philosophies well. At the last meeting, the Commission discussed the notion of encouraging citizens to participate in the political process rather than discouraging their participation, and this is included in the existing mission statement. She supports adopting the mission statement as it stands but is open to suggested modifications.

Commissioner Remy commented that the second to last bullet point could be clarified to define "services" to say that they are those which are relevant to the role of the Commission, not health care or other services.

Chairman Randolph said it could read "diligently pursuing innovative and responsive services in administering and enforcing the Political Reform Act."

Commissioner Downey asked what *else* it could have been. *(laughter)*

Commissioner Remy added that he hopes that the Commission would take a look at the mission statement when it discusses the service areas because it matters in determining whether there is a conflict between the mission and service area capacity problems.

Commissioner Huguenin said that the Commission does not talk about policies but regulations and that most of the Commission's policies end up in regulations, but there may be some that are not there.

Chairman Randolph replied that it does refer to policies in mentioning proactive programs to ensure compliance with the law.

Commissioner Remy suggested putting it under number three to say "clear, consistent, and understandable policies, regulations, forms, and instructions."

Commissioner Huguenin agreed that would be a good place.

Chairman Randolph asked if it was okay with General Counsel Luisa Menchaca.

Ms. Menchaca said it was.

Commissioner Remy moved to approve the mission statement as modified.

Commissioner Downey seconded.

Commissioners Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which passed with a 4-0 vote.

Chairman Randolph mentioned that she did not see any reason to have a separate vision statement, because it seems to be a succinct summary of the mission statement. In looking at what the Commission views as its charge, it is more complete to look at the mission statement.

Commissioner Downey agreed, saying that the vision statement is a repeat of the first bullet point of the mission statement and that it is not needed.

Commission Remy asked whether it is prepared for the headline that the Commission has eliminated its vision. *(laughter)*

Mr. Krausse suggested that the Commission could make the vision statement a preamble to the mission statement.

Commissioner Downey moved to approve relying solely on the mission statement and eliminating the vision statement.

Commissioner Huguenin seconded the motion.

Commissioners Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which passed with a 4-0 vote.

Chairman Randolph moved on to begin discussing the service areas in Mr. Krausse's memo.

Commissioner Downey asked about the McPherson Commission report, commenting on item 7 on page 1, which included a recommendation to eliminate unnecessary redundant filings. He mentioned that the Commission received a nice letter from the regulated community at the last meeting that suggested moving toward electronic filings and away from paper.

Mr. Krausse responded that one of the item in his memo which discussed changes to the Act, staff identified the elimination of paper reports for electronic filing. Shortly after that, the Commission was given a copy of a letter from the Secretary of State to the Legislature that broadly suggested moving to a real-time reporting system that is driven not by paper filings and filing deadlines but by a Proposition 34 approach where $1,000 or more is reported in a timely fashion and smaller contributions are reported semi-annually.

Chairman Randolph added that it is easy when talking about monetary contributions but harder when talking about expenditures. She said that this is a goal that the Secretary of State has and that the Commission should have in order to put together a working group to develop a system and plan for legislative changes to move to an electronic system at the state level. It may be difficult or impossible to implement it at the local level.

Commissioner Huguenin asked about the 24-hour filings of expenditures made within so many weeks before the election and whether those kinds of things would be moved to an electronic process.

Mr. Krausse replied that he is talking about anything that a committee does on the state level having to be reported within 24 hours. This may change to 48 hours when the group convenes; the details would be determined by the working group. Commission staff has proposed changing filing deadlines and moving to quarterly filings and other ideas, but it depends on the needs and desires of candidates and committees who should be part of the working group process. They may see that moving away from paper filings might work because they already have to report many of these contributions within 24 hours.

Commissioner Huguenin agreed particularly if they have a decent template to make the reporting process easy.

Mr. Krausse added that only those who have collected or spent $50,000 or more since 2000 are required to file electronically. A person may volunteer to file electronically, but once they do so, they are in the electronic filing system. This would pick up all of those smaller filers, with below

$50,000, who would become electronic filers because all state filing would be electronic. He said that the Secretary of State is already working on an online system

Commissioner Remy commented that the letter that came in on the McPherson Commission had indicated that the Commission had many wonderful recommendations and that the Commission had not done much with them, but Mr. Krausse's memo indicates that quite a few of them have been acted on. He wondered if, when the Commission discusses each item, it could be cross-referenced with the McPherson Commission recommendations to see how they fit.

Chairman Randolph said to start with the Enforcement Division, where probably the most important issue is the timeliness in processing the Commission's cases. The Commission gets almost 1,000 complaints per year, which varies depending on whether there is an election in any given year. In the last few years, there has been a significant backlog of substantive cases that are difficult to process. One of the goals of the new Enforcement Division chief is to review past cases and determine what needs to be continued or closed and also devise a better case tracking system. One option is to be more specific about the Commission's processing time expectations. There must be some flexibility in that because a complicated laundering case may take a long time to review while a non-filer case may be fairly easy to review. It serves the interest of both the complainant and the respondent to have the issue resolved. She said it seems like a reasonable goal to get to a point where most cases are being closed within a year of the filing of the complaint.

Commissioner Huguenin agreed. On the enforcement inventory behind tab 15, there is a case active from 1999. He said it would be helpful to talk with the Enforcement Division chief to discuss what he has learned since he began with the Commission to determine what he thinks should be added to the strategic plan as an approach for streamlining, such as setting up a triage system, or whether a one-year goal is realistic. The issue of resources comes up repeatedly. It may well be that that is part of the problem. While this is not the time to be asking the legislature for more resources, but perhaps we need to keep talking about not having enough resources so that we are higher on the list when resources become available. He also said he does not know how involved Commissioners get in working with staff, but the enforcement process interests him, and Commissioner Huguenin would be interested in spending some time reviewing how it works and discussing ways to make it work better.

Mr. Krausse commented that, for example, an agency in Connecticut has an internal statute of limitations. It seems that a non-flexible approach may not be the best one, but setting internal guidelines may be appropriate. It is something that can be discussed for the long-term. A goal is to figure out, given our resources at any given time, what the level of intake should be. There is no sense in opening cases when staff knows there are not enough bodies to handle the load. He hopes that in the next four or five years, the Commission will get some budget growth, but it is difficult to receive additional money, particularly for enforcement.

Commissioner Huguenin added that the more there are elections every year, the more complaints and increased intake the Commission receives.

Commissioner Remy noted that in 1998-99, the Commission had a goal of evaluating the merit of each complaint within 90 days and wondered if that is happening currently.

Enforcement Division Chief John Appelbaum replied that it is not currently happening, but staff are working toward doing that and are expediting things at a much greater level. A lot of new programs have been implemented for better case management.

Mr. Krausse asked whether 90 days is an unreasonable timeline within which the Commission could say whether it will pursue the case.

Mr. Appelbaum said typically it is not unreasonable, but it depends on how difficult it is to assess whether there is sufficient information to make a determination of whether to proceed. But, in the mainstream, once staff get a handle on the caseload, that is not unrealistic.

Commissioner Huguenin asked what the policy is about notifying responding parties when a complaint is received and making a request to them with a demand for a response with some information. He further asked for a description of the intake process.

Mr. Appelbaum responded that a complaint comes in and is screened for whether it states a violation of the Act, which some do not. Some cases lack so much information that there is no sufficient allegation. Other cases may look like a legitimate issue, so the intake person will call the potential respondent and request information. The goal is to screen out as much as possible at an early stage. Then, the cases are prioritized. If the case is not warranted for an investigation, the intake staff gives it to the chief investigator who will make a recommendation and give it to Mr. Appelbaum who makes the final decision. If the intake staff thinks it should go to full investigation, then it goes to the chief investigator and then to Mr. Appelbaum, who prioritizes it on a scale of 1-3, with 1 being the highest priority.

Commissioner Huguenin asked whether staff notifies every respondent that a complaint was received about them as soon as it was received.

Mr. Appelbaum said not necessarily, particularly if the case was closed with no action.

Mr. Huguenin asked if the complainant is required to notify the respondent.

Mr. Appelbaum said no, and that it is confidential information. Staff does not disclose the complainant or the information about the complainant to the respondent.

Commissioner Remy asked whether there is a written piece that discusses the enforcement process.

Mr. Krausse replied that the Commission has a pamphlet about what happens when an enforcement case is filed, which seeks to help the complainant.

Commissioners Remy and Huguenin both requested a copy of that pamphlet.

Mr. Krausse added that when one files a verified complaint under penalty of perjury, staff notifies both sides upon closure.

Mr. Appelbaum added that staff will notify the respondent when a case has been closed.

Commissioner Huguenin added that the respondent may not know until they receive such notification that there ever was a complaint. He stated that it is an interesting process.

Chairman Randolph suggested that when the Commission next discusses the strategic plan, there should be a specific discussion on enforcement with staff's recommendations, including a suggested optimal timeline for enforcement cases. She added that it would be helpful to have participation by outside parties in the discussion.

Commissioner Remy further commented that when the Commission looks at goals such as the 90 days and the 120 days and the three-year historical workload, it would be good to say that in order to effectively meet these goals, the Commission needs a particular staffing level. This would be needed in order to make the case to the legislature that if it wants an effective Fair Political Practices Commission, then it must give the Commission a certain staffing level, and absent that level, there will be some reduction in expectations and performance. If the Commission does not make this case, then it will be ignored.

Chairman Randolph said that is a good suggestion. She added that another enforcement item relates to whether the Commission should suggest to the legislature to change the threshold for major donor committee disclosure requirements, which is currently set at $10,000 in a calendar year. This threshold is too low. The goal of a major donor program is to see what big players are doing, and in this day and age, $10,000 contributors are not big players. She recommended changing the threshold to $25,000 or perhaps $50,000 so that major donors must separately disclose but not those who make one contribution to a candidate for governor, for example. She said she does not think it would be appropriate to eliminate the major donor requirement entirely.

Commissioner Huguenin said that perhaps it could be set at the maximum contribution level.

Chairman Randolph replied that the only problem with that is that the amount changes with cost of living index. Also, the major donor threshold applies at both the state and local level, and $25,000 at the state level is not very much money, but that amount at the local level might be a significant amount of money. The local level also does not have the electronic reporting that the state level has, so it is harder to get the parallel reporting information for major donors at the local level. She is not in favor of creating different thresholds, but this may be a reason to keep the threshold at the $25,000 level.

Commissioner Remy said it is an excellent suggestion to give notice that the Commission will consider this at the next meeting and get input from other groups to decide on this issue.

Chairman Randolph replied that this will be the goal for September.

Chairman Randolph advised that another goal that the Commission has discussed is putting its advice letters on the website, and she added that this goal should be a high on the priority list. It will likely reduce some calls to Technical Assistance.

Mr. Krausse said the issue would be easy if the policy was to begin from this point forward. If old advice letters were to be put online, then it would be a staff assignment to go through old advice to make sure that it is no longer good advice.

Chairman Randolph questioned whether this is an issue with letters that are already on Westlaw.

Mr. Krausse said he did not think staff goes back to pick up letters that have been essentially repealed.

Ms. Menchaca said that the current process is that as attorneys work on an advice and identify letters that need to be rescinded or modified, staff does go through the process of rescinding such letters in Westlaw. Although staff has tried a few times to go back and review advice letters, it has never been completely done due to resources.

Chairman Randolph asked what harm there would be in putting the same letters that are available on Westlaw on the Commission's website. The Commission could then add a caveat that the status of the letter must be checked. She recommended that this be included in the strategic plan as a shorter-term goal.

Commissioner Huguenin asked whether the Commission pays Westlaw for that posting.

Mr. Krausse replied that the Commission does not pay them. It is public information.

Chairman Randolph mentioned that another issue is whether to look at trying to create a more qualitative analysis of the Commission's advice function to make sure that people are getting timely and accurate advice.

Mr. Krausse responded that the legal division tracks written advice.

Ms. Cassady added that staff maintains a logging system for telephone advice, so there is a way she can see on a daily basis when people are on hold. There have never been three or more people on hold at any one time. If she goes over four and a filing deadline is near, then she sends an email to request that more staff log on. Most people are not on hold for more than a few minutes. Outside filing deadline periods, holding time has not been a major issue. The Commission gets an average of 80 calls per day.

Commissioner Huguenin asked if there is any email advice given.

Ms. Cassady said there is no email advice given.

Chairman Randolph said the Commission has discussed allowing people to request advice via email and be responded by written advice or by telephone. The concern is that people might give more weight to an email.

Commissioner Huguenin wondered whether any phone advice records are kept.

Ms. Cassady said consultants will keep a note about the subject of the call, and these are coded to be able to pull out how many of each type of call was received each month.

Mr. Krausse commented that when staff talk about legislative mandates and what the Commission has been funded for, it is difficult to track how many phone calls are received in certain areas where the Commission either was or was not funded. The Attorney General's office has a project tracking system which may be considered.

Ms. Menchaca added that written advice is tracked in terms of when letters are issued. Staff issue about a third of the letters within 21 working days provided in the statute and manage to get about 60% out within 42 working days. It is difficult to ascertain the qualitative satisfaction of the requestor unless they provide feedback to staff. In the past, the Commission has discussed a minor survey to people who have received a request for written advice.

Commissioner Huguenin said that a lot of businesses do that now, and it could be done on a sample basis or random basis.

Ms. Menchaca added that if the Commission thinks that would be useful, then it could be included as an objective for the strategic plan.

Chairman Randolph said that she would like to see in the strategic plan an indication of the staffing level needed to get to a much higher percentage than one-third of the letters going out within 21 working days. It is frustrating that the Commission does not have the resources to get these letters out quicker.

Ms. Menchaca mentioned that the Commission should focus on administrative support staff for the issuance of advice letters and other functions. While the attorneys may be cranking out these letters, support staff is also needed. She understood that most governmental entities have one support staff for every three attorneys, while the Commission has one support staff for about ten attorneys.

Commissioner Remy observed that he has heard nothing but good things about the advice that the Commission provides. Perhaps a little bit of surveying of the community would be good, because people have appreciated the quality and the quantity of what the Commission does in this area. If there is talk about needing resources to meet a need, then it is good to show that people really use the service.

Chairman Randolph noted that another issue in Mr. Krausse's memo is how to account for staff time and determining which resources and how much staff time are going to what tasks, like how long it takes to get a regulation done, an advice letter completed, and an enforcement case

closed, for example. She wondered if this is something that the Attorney General's program is designed to address.

Mr. Krausse replied that it absolutely is. He said it seems like something that could track just about any workload. The question is whether it is worth the time to key in all of that information, but right now, staff time is being tracked but is not easy to compile, especially by something as specific as a regulation.

Chairman Randolph mentioned that the memo also covers the area of internal staff development to ensure that promotional opportunities are available and that compensation is commensurate with other agencies. Because the Commission is so small, this is a consistent problem, where people want to move on to better opportunities in bigger agencies where they might supervise more people or make more money. Any goals that the Commission can create, such as increasing the pay scale for various classifications or getting a new attorney classification for a higher level attorney position, would help in staff retention and development.

Mr. Krausse commented that the Enforcement Division has developed a great articulation of the need for a couple of their classifications that are currently underpaid relative to other similar classifications in state service. The Individual Development Plan (IDP) that some state agencies employ is also a method of more formally identifying where an employee wants to be an a year, two years, or five years from now. This is something that can be done with almost no cost and without another agency's approval to get people focused on where their next position might be.

Chairman Randolph said that one way that people have been able to move up is through cross-training, learning different areas of the agency, and changing divisions to have the opportunity to do something different and take advantage of promotional opportunities. Staff training in specific areas such as writing or trial advocacy requires the use of resources. The challenge is finding free ways to provide training to our employees.

Mr. Krausse added that when staff have more advice letters and enforcement cases than can be handled, there is hardly time to go to a training.

Commissioner Remy asked if the Commission does any staff retreats.

Mr. Krausse responded that each division takes time out at least annually to have a retreat to identify its own goals, and it is not funded, rather costs usually come out of the pocket of the division chief.

Ms. Menchaca noted that, regarding retreats and IDPs, staff supervisors must be certain, in terms of resources, that they will be able to accomplish and deliver the objectives to the employees.

Commissioner Remy said that he came from the Employment Development Department (EDD), which was federally funded, so it did not go through the state budget process. They would have individual retreats with each of the separate sections of the EDD, and then a broad, integrated retreat with all of the division branch leaders. This was very useful to get the different divisions talking with each other.

Mr. Krausse added that one of the advantages of being a small agency is that the key people get together frequently to discuss a regulation, for example.

Chairman Randolph said that staff internally foster that communication during regulatory project meeting and significant advice letter discussions. As a small agency, the Commission does this often on an informal and very effective basis.

Mr. Krausse said that the Commission always devotes some funding for travel to COGEL (the Council on Governmental Ethics Laws) to find out what other agencies are doing and coordinating an in-state conference of all of the ethics agencies to discuss enforcement issues and legislation, for example.

Chairman Randolph said she envisions the strategic plan process as including a more detailed discussion about enforcement in September, internal input from the divisions on each of the goals that have been discussed generally, and the drafting of a proposed strategic plan setting out these goals, with a timeframe, to discuss in detail in October.

Chairman Randolph added that the Commission did not discuss its website, which she thinks is phenomenal. In discussing possible goals, it would be useful to look at whether the website can help accomplish those goals.

Mr. Krausse said that the Commission will be melding its public education effort with Jon Matthews, who has taken over Sigrid Bathen's duties. He will have at least a part-time assistant, so the media and public education functions are being collapsed into a general communications approach. Jon is solely to thank for the content on the website and making sure it is updated.

Commissioner Huguenin said that he is on a list-serve with the Public Employment Relations Board, and they have a list-serve for their decisions. Anyone can go to their website and download the full text of their issued decisions. It seems that when and if the advice letters will be available, they could be offered through the website.

Chairman Randolph said that it would be like an electronic subscription service to advice letters.

Mr. Krausse said that is currently done quarterly with the Commission's bulletin, which lists every advice letter and a brief summary. This could be pulled out and done monthly, perhaps, depending on staff time.

Commissioner Huguenin said we have the list-serve now for press releases and other items, so he did not think it would be too hard to cross-reference that with an advice letter system to give notice that an advice letter has been issued and provide a tracking number, for example.

Mr. Krausse asked whether he should add to the Enforcement item a specific reform of the 120-day demand process.

Chairman Randolph said yes.

Commissioner Huguenin added that it should include whatever jurisdictional issues that arise out of that between the Commission and the court system.

Chairman Randolph announced that the next meeting is September 1.

The meeting adjourned to closed session at 2:52 p.m.

Dated: July 28, 2005

Respectfully submitted,

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Whitney Barazoto
Commission Assistant

Approved by:

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Liane Randolph
Chairman